

NEBRASKA ADMINISTRATIVE CODE

Title 69 - Department of Correctional Services

Chapter 1 - EMPLOYEE DISCIPLINE

001 Applicability. The provisions of this rule shall apply to all employees of the Department of Correctional Services.

002 Department Policy. It is the policy of this Department that, when it becomes necessary to administer discipline against an employee, the type of discipline will be imposed consistent with the nature, severity, and effect of the offense; the type and frequency of previous offenses; the period of time elapsed since a prior offensive act; and consideration of extenuating circumstances. This rule must be read in conjunction with the State Personnel Rules and Regulations and/or applicable union contracts. Uniform application of this regulation and all policies governing disciplinary action will assist the Department in uniformity, consistency and elimination of many grievance actions.

003 Progressive Discipline. The Department advocates the principle of progressive discipline when and where major violations are not involved. Unless the security of the institution/program is compromised or the employee has committed a major violation, all employees should be given the opportunity to improve. Discipline should be progressive in nature.

004 Original Probation/Non-Permanent Employees. It is not the intent of the

Department or State Personnel to allow original probation/non-permanent employees the same due process as permanent employees. The very nature of original probation/non-permanent employees is to watch their progress closely and to utilize this time as an essential part of the selection process. For that reason, the following procedure will be accomplished for all original probation/non-permanent employees.

1. When it is determined that an original probation/non-permanent employee is not suitable for the position, and either termination or extended probation is necessary, the Chief Executive Officer will so justify on a performance evaluation form sent to the Director. The performance evaluation will point out those areas of deficiency which require the action to be taken.

(New Promulgated Rule)

004.02 The Director will approve or disapprove the requested action. If extension of probation is approved, the employee will be

so notified by a copy of the performance evaluation and appropriate counseling. If termination is approved, the employee will be notified by letter with the reasons for termination specified in the letter.

004.03 In accordance with all rules and labor contracts, original probationary employees do not have grievance rights.

005. Disciplinary Charges of Employees It is the intent of the Department

that all permanent employees be guaranteed all due process ensured them under

rules and regulations, labor contracts and law. For that purpose, the following

disciplinary procedures will be adhered to by all staff members of this Department.

An employee who violates any of the following rules shall be punished as the agency

may direct.

005.01. Failure to Obey Orders, Rules or Regulations:

005.01A. Violates or fails to obey a lawful verbal or written order.

005.01B. Fails to comply with a published administrative regulation, operational memorandum or post order of this agency.

005.01C. Fails to comply with state constitution or statute, or executive order.

005.01D. Fails to comply with rules of the labor contract or state of Nebraska Classified Personnel System.

005.01E. Fails to demonstrate proper knowledge, skills, and/or abilities on the job which places the Department in a position of liability concerning staff and service population.

005.02 Absence Without Leave:

005.02A. Fails to go to his/her appointed place of duty at the time prescribed.

authorization.	005.02B.	Fails to appear at his/her job location without
	005.02C.	Departs from his/her job location without authorization.
periods.	005.02D.	Improperly uses or abuses any type of leave, meal or rest

005.03. Drugs and/or Alcohol Abuse

	005.03A.	Possesses or introduces narcotics, alcoholic beverages, or other unlawful drugs onto state property.
on duty.	005.03B.	Drinks or otherwise takes unlawful drugs or alcohol while
alcohol.	005.03C.	Reports to duty under the influence of unlawful drugs or
unlawful drugs.	005.03D.	Operates any vehicle while drunk or under the influence of

005.04. Insubordinate Acts:

supervisor.	005.04A.	Fails to accept a proper assignment from an authorized
	005.04B.	Strikes or assaults a superior.
deportment toward a superior.	005.04C.	Treats with contempt or is disrespectful in language or
	005.04D.	Provides false or misleading information to a manager, supervisor or superior employee.

005.05. Fraudulence, Negligence, or Improper Use.

005.05A. Negligently or improperly uses state of Nebraska property, equipment or funds, or converts same to his or her own use.

005.05B. Improperly uses influence to gain, or attempt to gain, promotion, leave or favorable assignment,.

005.05C. Gives fraudulent information or omits information from employment application.

005.05D. Is negligent in obtaining proper current license or certification required by law or agency as a condition of employment.

005.06 Conduct Inappropriate for a State Employee.

005.06A. Makes statements or comments that cause disruption in the work place.

005.06B. Fails to maintain satisfactory working relationships with the public, other employees or the inmate population.

005.06C. Is derelict in the performance of his/her duties.

005.06D. Displays actions or makes statements or comments that are considered offensive to an individual or group based on race, ethnic origin, sex, religion, age, gender or disability.

005.06E. Fails to make reasonable provision for payment of personal debts, which results in more than one garnishment

005.06F. Commits acts on or off the job which adversely affects the employee's performance and/or the Department's performance or function.

005.07 Being in an unalert state (includes sleeping, failure to

respond to a signal, reading unauthorized

materials, resting

one's eyes, or any similar actions showing gross
inattention

to duties).

005.07A. Any employee not performing a function related to the safety or security of the Department who violates this rule will be punished as follows:

005.07A(1) First Offense -- Formal counseling (corrective action) to two days' suspension without pay.

005.07A(2) Second Offense -- Two to five days' suspension without pay.

005.07A(3) Third Offense -- Termination.

005.07B. Any employee performing a function related to the safety or security of the Department who violates this rule will be punished as follows:

005.07B(1) First Offense -- Written warning to termination.

005.07B(2) Second Offense
-- Five days' suspension to termination.

005.07B(3) Third Offense -- Termination.

005.07C. The Director retains the decision to terminate for any incident after review of the evidence and determining what is in the best interests of the Department.

of a similar 005.07D. A two-year time with no additional offenses
count to start nature will lapse the offense and cause the
has been over again. In the case of an employee who
rehired, the two- terminated for being in an unalert state, if
year period for lapse will begin upon rehire.

006 Disciplinary Action:

006.01 The Director has the responsibility to impose all disciplinary action, except written warnings. The Director will impose all disciplinary action which results in a change of pay, status or tenure for the employee. These actions include:

Disciplinary Probation

Suspension Without Pay

Demotion

Reduction in Salary Within Salary Grade

Dismissal

006.01A. One additional, lesser disciplinary action is available in the form of a written warning. This disciplinary action is delegated to the Chief Executive Officers.

006.01B. Any actions involving violations of the work place harassment policy, including written warning or dismissal of complaint will not be delegated, but must be approved by the Director. All actions listed above, when imposed, will become a part of the employee's personnel file, so all elements of due process are to be followed. Employees will be notified of all disciplinary action by letter from the Chief Executive Officer. This letter will describe the nature of the offense and the disciplinary action taken.

With regard to any disciplinary action involving "work place harassment," the Director will have final review and approval of these actions.

2. Disciplinary action shall consist of one of the following for any one incident.

006.02A. Written Warning. This is a disciplinary action given the employee by division and program heads and the Chief Executive Officer of facilities, except in cases of work place harassment. Because this is an action which naturally predicts anticipated improvement, not involving a loss of pay, status, or tenure, it should include remarks of what the performance problem is, suggested remedies and time periods in which to improve. A copy must be furnished to the employee for his/her compliance. A copy will be forwarded to the Director's office for information and filing.

006.02B. Disciplinary Probation. This disciplinary action may affect an employee's pay, status and tenure. The length of probation will not exceed six (6) months. Because this is an action which naturally predicts anticipated improvement, the imposition of discipline must be accompanied by a letter telling the employee what the performance problem is, suggested remedies and expected improvement anticipated by the end of the probation period.

006.02C. Suspension Without Pay. When suspended without pay for disciplinary reason (as distinguished from investigatory suspension), the length of suspension may be any amount of working days up to thirty (30), and will not exceed thirty (30) working days.

006.02D. Demotion. The employee may be demoted in grade as a disciplinary action. Employees who receive a disciplinary demotion to a position of a lower salary grade shall have their salary reduced by a maximum of 5% for a downward transfer or demotion of one salary grade, 7.5% for a downward transfer or demotion of two salary grades, and 12.5% for a downward transfer or demotion of three salary grades or more. In no case shall the new salary be lower than the minimum permanent rate nor more than the maximum rate of the new salary grade.

006.02E. Reduction in Salary within Salary Grade. As a disciplinary action, employees may be reduced in salary, but retain their grade. Reduction will be permanent until the next pay increase or until the Director takes action to raise it, whichever comes first.

006.02F. Dismissal. Employees will be notified of all disciplinary action to include dismissal by letter from the Chief Executive Officer. This letter will describe the nature of offense and the disciplinary action taken. In dismissal, two weeks pay in lieu of notice will be granted except in rare cases of gross misconduct. The Chief Executive Officer, in concert with the Director, will determine the situation under which no pay will be granted.

006.02G. If any provision of this rule is inconsistent with the Classified System Personnel Rules and Regulations or applicable union contracts, the provisions of the Personnel Rules and Regulations or the union contract shall be controlling.

007 Investigatory Phase

007.01. During the period of time when the alleged incident or performance problem is being investigated, a decision must be made whether it is in the best interests of the Department to keep the employee in the work environment. Two options are open to the Department:

007.01A. To reassign the employee to another work assignment at their current rate of pay.

007.01B. To suspend the employee from work with or without pay.

007.01B(1). Employees covered under the NAPE contract can only be suspended for five(5) working days without pay. They must then be placed on suspension with pay, returned to work, or action for discipline must be taken.

07.02. Immediate suspension will be appropriate only in the following circumstances.

007.02A. If the presence of the employee would not be in the best interests of institutional security.

007.02B. If the employee has committed an act of such magnitude that his/her effectiveness as an employee has been diminished.

007.02C. If there is a possibility the employee would be physically or psychologically injured by being allowed back in the work place.

007.02D. If, in the judgment of the Chief Executive Officer, the employee cannot successfully function in the work place or his/her presence could interfere with the investigation.

007.03. If suspension pending investigation is contemplated, the following steps must be taken:

007.03A. The employee will be called into a meeting with the supervisor and told that suspension is contemplated. The employee will have the opportunity to present his/her side of the incident and any mitigating evidence.

007.03B. If the decision is to suspend, the supervisor will note all relevant information in a memo to the Chief Executive Officer. A letter stipulating the suspension and reasons for suspension will also be sent to the employee.

007.03C. The Chief Executive Officer will notify the Director's office in writing as soon as possible after the suspension.

007.04. All suspensions pending investigation can be with or without pay. If the investigation indicates that such action is warranted, disciplinary action will be taken. If the employee is reinstated, it shall be with adjusted back pay and service credit for the period of suspension. (Pay may be adjusted considering unemployment payments and any other employment during the period of suspension .) If discipline taken includes a period of suspension, this suspension in part or as a whole can be used to satisfy the discipline imposed.

007.05. Employees will not be maintained on suspension with or without

pay for over thirty (30) work days before imposing the disciplinary process,

unless the Department is awaiting the results of an outside investigation or

the employee is awaiting trial by a court of law.

008. Disciplinary Due Process. The following due process is necessary once a

charge has been investigated and there is reasonable cause established to

discipline.

1. Statement of Charges. When a charge has been confirmed,

the first step of due process will be the presentation of charges. A supervisor will prepare a statement of

charges, meet with the employee and present him/her with the document. The employee will be informed that he/she may remain silent and does not have to answer to the charges at this before the charges are explained. The supervisor will fully explain to the employee the charges being brought. At a minimum, the statement of charges must include:

008.01A. A detailed statement of the charges.

008.01B. The date, time and location of the pre-disciplinary hearing.

008.01C. The employee's right to representation at the hearing.

008.01D. A list of the documentary evidence and names of witnesses. Documents listed must be attached to the statement of charges. Persons who have authored any portion of the documented evidence will be subject to call as a witness and need not be listed on the witness listing.

008.02. If additional evidence is discovered after the statement of charges is presented, the employee will be given the evidence and an additional 24 hours to prepare mitigation. During this stage of disciplinary due process, supervisors should be mindful of the following just-cause tests:

008.02A. Was the rule violated a reasonable rule?

008.02B. Was adequate notice of the rule given the employee?

008.02C. Was the investigation conducted completely and concisely?

008.02D. Was it a fair investigation?

008.02D. Is the proof enough to bring these charges?

008.03. Time to Prepare. The 24 hours is a minimum time requirement, and an extension of this time can be readily approved, if a problem exists and is presented in good faith. This 24 hour time lapse will allow the employee time to gather any evidence of mitigation and to choose representation, if desired.

008.04. Pre-disciplinary Hearing. The purpose of the pre-disciplinary hearing with the Chief Executive Officer is to allow both parties, i.e. management and employee, to explain their sides of the story. This hearing will be informal in nature. Presentation of evidence and witnesses will be at the discretion of the C.E.O., but should be sufficient to adequately present the case for both sides.

During this hearing, the employee will be informed that he/she may submit a written statement of mitigation through the CEO to the Director. The employee will have two (2) work days after the hearing to prepare and deliver this mitigating statement to the CEO. It is the responsibility of the CEO to transmit the results of the hearing, the employee letter of mitigation and a recommendation for discipline, if appropriate, through the Assistant Director to the Director.

During the pre-disciplinary hearing, the C.E.O. and management should be mindful of the following just cause tests:

008.04A. Was the rule violated a reasonable rule?

008.04B. Did the employee have adequate notice of the rule?

008.04C. Was the investigation conducted fairly, concisely and completely?

008.04D. Is there proof of a violation?

008.04E. Is the employee receiving fair and equal treatment?

008.04F. Is the penalty recommended consistent with past, similar cases?

008.05. Director's Action. The Director, upon receipt of the recommendation of the C.E.O., will approve/disapprove or modify the disciplinary action. The Director may act upon the discipline from the C.E.O.'s recommendation, may request further investigation before acting, or may decide to hold a hearing of the principals before acting. If a hearing is to be held, the Director may appoint a hearing officer to chair the hearing.

When the Chief Executive Officer recommendations for disciplinary action are received by the Director, they are routed to the appropriate Assistant Director and the Personnel Administrator for recommendation/comment. If the recommendation of the Chief Executive Officer is to be altered by the recommendation of the Assistant Director or Personnel Administrator, either individually or cooperatively, the Chief Executive Officer will be called and advised of this recommendation. This action will give the Chief Executive Officer the opportunity to provide and strengthen his or her recommendation with the Director.

008.06. Notice of Discipline Imposed. After the Director's action is received, the C.E.O. will present the employee with the written notice of disciplinary action. This document will state the reasons for discipline, ways to improve (if appropriate), the discipline to be imposed, and will contain the employee's signature of understanding and receipt. The written notice will be mailed certified with return receipt requested or presented in person, and signed by the employee. If the employee will not sign, that refusal must be witnessed.

008.07. Disciplinary File Retention.

008.07A. Employee Personnel File. Disciplinary documents which are to be placed in the employee's personnel file shall include:

008.07A(1) Statement of charges

008.07A(2). Written warnings

008.07A(3). Memo of recommendation to the Director

008.07A(4). Any employee letters of mitigation

008.07A(5) Letter imposing discipline

008.07B. Institutions/programs may retain evidentiary information supporting the discipline under separate folder in a separate file cabinet. However, all material should be destroyed when the time comes to destroy the personnel file material. Two years for destruction is required by contract, however, it will be the employee's responsibility to request destruction. Personnel clerks will not be required to do constant file checks to insure this material is destroyed in a timely manner.

008.07C. The Director's office will retain a copy of all material involved in employee disciplinary actions. This material will be maintained indefinitely for purposes of statistical information and to answer later suits brought beyond the required two-year rule concerning the employee personnel file.